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Matt Blunt
Secretary of State

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the web site at <http://mosl.sos.state.us/moreg/pubschedule.htm>.

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 26, *Missouri Register*, page 27. The approved short form of citation is 26 MoReg 27.

The rules are identified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

FROM THIS ANGLE

Occasionally, we have unique questions/situations that arise, that I believe should be discussed in this column. Copyrighted materials and "incorporated by reference" is one such subject that continues to raise questions. By reason of this fact, I have requested that our General Counsel, Terry M. Jarrett, write "From this Angle" this month and present his findings as they pertain to this type of material. Below is the content of Terry's well-reasoned position on this subject.



Lynne C. Angle, Director, Administrative Rules

Copyrighted Materials and "Incorporation by Reference"

From time to time in the rulemaking process, agencies will "incorporate by reference" materials which would be unduly cumbersome or expensive to publish in the *Code of State Regulations*. Indeed, Section 536.031.4, RSMo, allows an agency to incorporate by reference such materials in its administrative rules so long as "the full text of the material incorporated by reference is made available to any interested person at both the office of the secretary of state and the office of the adopting state agency, and copies thereof made available to any interested party at a cost not to exceed the actual cost of copy reproduction."

Some materials that agencies have incorporated by reference in their rules include copyrighted materials. Copyright law generally prohibits copying or reproducing the work without the authorization of the copyright owner. If someone were to request copies of the copyrighted materials from either the agency or the Secretary of State, the owner of the copyright might object to the reproduction. Consequently, the Secretary of State believes that in order for the materials to be "made available" as directed by the statute, the agency must submit along with its proposed rulemaking to the Secretary of State an "Authorization To Reproduce Copyrighted Material" form signed by the copyright owner. Blank forms are available upon request from the Secretary of State for use by agencies. By signing the form, a copyright owner authorizes the agency and the Secretary of State to make available copies of the copyrighted materials in accordance with Section 536.031. A sample form is reproduced below. This safeguard should protect the agency and the Secretary of State from violating any copyright laws in situations where the agency wants to incorporate copyrighted materials by reference in its rules.

For the applicable "Copyright Release" see the form on the following page.



Terry M. Jarrett,
General Counsel

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Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife:
Privileges, Permits, Standards**

EMERGENCY AMENDMENT

3 CSR 10-9.353 Privileges of Class I and Class II Wildlife Breeders. The commission is amending sections (1)–(10) and adding new sections (3) and (16).

PURPOSE: This amendment changes the requirements for cervids entering the state of Missouri to protect Missouri livestock and wildlife from the importation of diseases that potentially pose a threat to the public health, safety and welfare.

EMERGENCY STATEMENT: The Department of Conservation has determined that chronic wasting disease poses significant risks that could be devastating to Missouri's wildlife resources and captive cervid industry. This disease, if introduced into Missouri, is a potential immediate threat to the public health, safety, and welfare. The agency has weighed the compelling governmental interest against the due process rights of the public to notice and comment. In light of the potential health and welfare threats, there is a compelling governmental interest to enact this rule through emergency amendment. Insight provided by the captive cervid industry and the Department of Agriculture has proved extremely beneficial in

developing this amendment to minimize the risks of chronic wasting disease associated with the movement of cervids. The agency believes this emergency amendment to be fair to all persons and parties under the circumstances. This emergency amendment was filed on March 11, 2002, effective March 21, 2002, expires September 16, 2002.

(1) Class I and Class II wildlife as defined in 3 CSR 10-9.230 and 3 CSR 10-9.240, may be exhibited, propagated, reared or held in captivity by the holder of the appropriate Class I or Class II wildlife breeder permit at a specific location indicated on the permit.

(2) A permit may be granted after satisfactory evidence by the applicant that stock will be secured from a legal source other than the wild stock of this state **and as provided in section (3) of this rule**; that the applicant will confine the wildlife in humane and sanitary facilities that meet standards specified in 3 CSR 10-9.220; and that the applicant will prevent other wildlife of the state from becoming a part of the enterprise.

(3) Any cervid entering a Class I wildlife breeder operation that has ever been held in a state or province having a documented chronic wasting disease case shall be required to come from a herd comprised of animals that have been certified, through a United States Department of Agriculture approved or state-sponsored program, to be chronic wasting disease free for a minimum of three (3) years. Proof of such certification and all permits issued by the state veterinarian's office allowing cervids to enter Missouri must be kept by the permittee and are subject to inspection by an agent of the department at any reasonable time.

(4) The wildlife may be used, sold, given away, transported or shipped; provided, that state- and federally-designated endangered species may not be sold without the written approval of the director; that skunks may not be imported, bought, sold, transported, given away or otherwise disposed of; that live raccoons, foxes and coyotes may not be imported; and that wildlife may be sold or given away only to the holder of the appropriate permit, where required, except as provided in section [(3)] **(8)** of this rule.

(5) Cities, towns and counties may establish ordinances further restricting or prohibiting ownership of Class II wildlife, with approval of the department. In instances where prohibitions apply, no permit will be issued by the department.

(6) No Class I or Class II wildlife breeder permit is required for wildlife legally held by circuses, publicly-owned zoos or *bona fide* research facilities; however, those wildlife may not be held for personal use. Physical contact between humans and Class I and Class II wildlife in circuses must be restricted to the handlers, performers or other circus employees.

[(2)] **(7)** Any sale, shipment or gift of wildlife by a Class I or Class II wildlife breeder shall be accompanied by a written statement giving his/her permit number and showing the number of each species and the name and address of the recipient. No wildlife of any kind may be liberated unless specific permission has been granted on written application to the conservation agent in the district where the release is to be made.

[(3)] **(8)** Wildlife, except skunks, foxes, coyotes and raccoons may be shipped, transported or consigned to a wildlife breeder by non-residents without a Missouri wildlife breeder permit, but that wildlife shall be accompanied by appropriate permit or other proof

of legality in the state of origin. Persons purchasing wildlife at consignment sales shall obtain a wildlife hobby or appropriate wildlife breeder permit prior to the purchase, except nonresidents may possess and transport purchased wildlife without permit for forty-eight (48) hours following close of the sale.

[(4)] (9) Notification of the date and place of any public sale of consigned wildlife shall be provided the conservation agent of the county in which the sale will be held not less than thirty (30) days prior to the sale.

[(5)] (10) The holder of a Class I or Class II wildlife breeder permit may exhibit wildlife at locations other than those listed on the permit.

[(6)] (11) None of these privileges shall extend to permitting the act of hunting for such stock except that big game mammals may be shot for purposes of herd management by the permit holder or his/her agents, but only by written authorization of the director.

[(7)] (12) No state permit shall be required of individuals holding migratory waterfowl under valid federal authorization.

[(8)] (13) No state permit shall be required for the propagation, sale or display of birds of prey by persons holding a valid federal permit; provided, that these birds may be used to take or attempt to take wildlife only by persons holding a valid falconry permit.

[(9)] (14) The holder of a Class II wildlife breeder permit shall report escaped animals immediately to an agent of the department.

[(10)] (15) The holder of a Class I wildlife breeder permit may sell legally-acquired dressed or processed quail, pheasants, partridges and game birds eggs at retail and to commercial establishments under provisions of 3 CSR 10-10.743, provided all sales are accompanied by a valid invoice and the required records are maintained by the wildlife breeder.

(16) Animal health standards and movement activities shall comply with all state and federal regulations.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule [was] previously filed as 3 CSR 10-10.755. Original rule filed Aug. 18, 1970, effective Dec. 31, 1970. For intervening history, please consult the Code of State Regulations. Emergency amendment filed March 11, 2002, effective March 21, 2002, expires Sept. 16, 2002. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife:
Privileges, Permits, Standards**

EMERGENCY AMENDMENT

3 CSR 10-9.565 Licensed [Shooting Area] Hunting Preserve: Privileges. The commission is amending section (1).

PURPOSE: This amendment addresses current disease risks associated with the interstate transport of cervids that potentially pose a threat to the public health, safety and welfare; clarifies permit privileges; and, establishes a tagging standard for harvested wildlife.

EMERGENCY STATEMENT: The Department of Conservation has determined that chronic wasting disease poses significant risks that could be devastating to Missouri's wildlife resources and captive

cervid industry. This disease, if introduced into Missouri, is a potential immediate threat to the public health, safety, and welfare. The agency has weighed the compelling governmental interest against the due process rights of the public to notice and comment. In light of the potential health and welfare threats, there is a compelling governmental interest to enact this rule through emergency amendment. Insight provided by the captive cervid industry and the Department of Agriculture has proved extremely beneficial in developing this amendment to minimize the risks of chronic wasting disease associated with the movement of cervids. The agency believes this emergency amendment to be fair to all persons and parties under the circumstances. This emergency amendment was filed on March 11, 2002, effective March 21, 2002, expires September 16, 2002.

(1) [An agent of the department shall inspect each proposed licensed shooting area to determine that it meets all requirements of this rule before a permit is issued.] **Licensed hunting preserves are subject to inspection by an agent of the department at any reasonable time. Animal health standards and movement activities shall comply with all state and federal regulations.** Any person holding a licensed [shooting area] **hunting preserve** permit may release on his/her licensed [shooting area] **hunting preserve** legally acquired pheasants, exotic partridges, quail and ungulates (hoofed animals) for shooting throughout the year, under the following conditions:

(A) Game Bird [Shooting Area] **Hunting Preserve.**

1. The [shooting area] **hunting preserve** shall be a single body of land not less than one hundred sixty (160) acres nor more than six hundred forty (640) acres in size. [Shooting areas] **Hunting preserves** shall be posted with signs specified by the department. [Shooting area] **Hunting preserve** permits will not be issued for areas—

A. Within five (5) miles of any area where there is an ongoing department game bird release program or where the most recent release of department game birds has been made less than five (5) years prior to receipt of the application.

B. In any location where those activities are considered by the department as likely to further jeopardize any species currently designated by Missouri or federal regulations as threatened or endangered wildlife.

[2.] The permittee shall keep an accurate record of all game birds of each species acquired, propagated, sold, held, released, the number of each species taken on the area and the full name and address of the taker. These records shall be maintained on the premises of the licensed shooting area, subject to inspection by an authorized agent of the department at any reasonable time.]

[3.] 2. The permittee shall attach to the leg of each game bird taken on the [area] **preserve** a leg band furnished by the department, for which the permittee shall pay ten dollars (\$10) per one hundred (100) bands.

[4.] 3. Any person taking or hunting game birds on a licensed [shooting area] **hunting preserve** shall have in his/her possession a valid hunting permit or licensed [shooting area] **hunting preserve** hunting permit, except that persons fifteen (15) years of age or younger, when accompanied by a properly licensed adult hunter, and residents sixty-five (65) years of age and older, may hunt without permit.

[5.] 4. Game birds taken on a licensed [shooting area] **hunting preserve** may be possessed and transported only when bearing the prescribed leg band. Game birds may be taken in any numbers on such areas.

[6.] 5. The permittee must release during the shooting season at least one (1) game bird per acre of [shooting area] **hunting preserve**, with at least one-half (1/2) of the birds to be bobwhite quail, if quail are to be hunted outside the statewide season. All birds shall be from a source approved by the department.

(B) Big Game [Shooting Area] Hunting Preserve.

1. The [shooting area] **hunting preserve** for ungulates shall be a single body of land not less than three hundred twenty (320) acres and no more than three thousand two hundred (3,200) acres in size, fenced so as to enclose and contain all released game and exclude all hoofed wildlife of the state from becoming a part of the enterprise and posted with signs specified by the department. **Fence height shall meet standards specified in 3 CSR 10-9.220.**

[2. The permittee shall keep an accurate permanent record of the number of each species acquired, propagated, sold, held, released, the number of each species taken and the full name and address of the taker. These records shall be maintained on the premises of the licensed shooting area, subject to inspection by an authorized agent of the department at any reasonable time.]

2. Any cervid entering a big game hunting preserve operation that has ever been held in a state or province having a documented chronic wasting disease case shall be required to come from a herd comprised of animals that have been certified, through a United States Department of Agriculture approved or state-sponsored program, to be chronic wasting disease free for a minimum of three (3) years. Proof of such certification and all permits issued by the state veterinarian's office allowing cervids to enter Missouri must be kept by the permittee and are subject to inspection by an agent of the department at any reasonable time.

3. The permittee may exercise privileges provided in 3 CSR 10-9.353 for species held under the big game hunting preserve permit. Any breeding enclosure(s) contained within the big game hunting preserve shall meet standards specified in 3 CSR 10-9.220.

[3.] 4. Any person taking or hunting ungulates on a [licensed shooting area] **big game hunting preserve** shall have in his/her possession a valid licensed [shooting area] **hunting preserve** hunting permit. [Big game taken on those areas may be possessed and transported only when accompanied by a bill of sale showing the date, licensed shooting area permit number and name and address of the taker.] **The permittee shall attach to the leg of each ungulate taken on the preserve a locking leg seal furnished by the department, for which the permittee shall pay ten dollars (\$10) per one hundred (100) seals.** Any packaged or processed meat shall be [stamped] **labeled** with the licensed [shooting area] **hunting preserve** permit number.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-10.765. Original rule filed Jan. 19, 1972, effective Feb. 1, 1972. For intervening history, please consult the Code of State Regulations. Emergency amendment filed March 11, 2002, effective March 21, 2002, expires Sept. 16, 2002. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife:
Privileges, Permits, Standards**

EMERGENCY RULE

3 CSR 10-9.566 Licensed Hunting Preserve: Records Required

PURPOSE: This rule requires that licensed hunting preserves maintain records on the premises that would include information on species, purchase, sale, propagation, health certification,

applicable permits and harvest, on a form furnished by the Department of Conservation.

EMERGENCY STATEMENT: The Department of Conservation has determined that chronic wasting disease poses significant risks that could be devastating to Missouri's wildlife resources and captive cervid industry. This disease, if introduced into Missouri, is a potential immediate threat to the public health, safety, and welfare. The agency has weighed the compelling governmental interest against the due process rights of the public to notice and comment. In light of the potential health and welfare threats, there is a compelling governmental interest to enact this rule through emergency provisions. Insight provided by the captive cervid industry and the Department of Agriculture has proved extremely beneficial in developing this rule to minimize the risks of chronic wasting disease associated with the movement of cervids. The agency believes this emergency rule to be fair to all persons and parties under the circumstances. This emergency rule was filed on March 11, 2002, effective March 21, 2002, expires September 16, 2002.

Licensed hunting preserve permittees shall keep a current record, by date, of the number of each species held, acquired, propagated, sold, released, the number of each species taken on the preserve and the full name, address, and permit number (if applicable) of each buyer, seller, shooter and/or taker, on forms provided by the department. These records and applicable state and federal animal health records and permits for each animal shall be maintained on the premises of the licensed hunting preserve and shall be subject to inspection by an authorized agent of the department at any reasonable time.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Emergency rule filed March 11, 2002, effective March 21, 2002, expires Sept. 16, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 2—General Rules**

EMERGENCY RULE

4 CSR 110-2.131 Definition of a Public Health Setting

PURPOSE: The purpose of this rule is to implement section 332.311, RSMo as amended by HB567 of the 91st General Assembly and defines the public health settings in which a dental hygienist may practice without the supervision of a dentist.

EMERGENCY STATEMENT: This emergency rule defines the term public health setting as authorized by section 332.311.2, RSMo which was amended by SB393 and HB567 of the 91st General Assembly. This emergency rule is necessary to protect the public health, safety and welfare of Missouri children by providing access to dental care in public health settings by dental hygienists. SB393 and HB567 authorized currently licensed dental hygienists, who have been in practice at least three (3) years, to work in public health settings and provide fluoride treatments, teeth cleanings and sealants to children who are eligible for medical assistance, pursuant to Chapter 208, RSMo without the supervision of a dentist. In SB393, the legislature recognized the importance of children receiving adequate access to dental care and deemed the enactment of section 332.311 to be an emergency. Absent an emergency rule setting forth the definition of a public health setting, adequate access to dental health care for children will be delayed for many months.

*The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The board has weighed the compelling governmental interest against the due process rights of the public to notice and comment. A regular rule will be filed. Formal notice and comment opportunities will be provided through the regular rulemaking process. The board also believes this emergency rule is fair to all interested parties affected by the circumstances. This emergency rule is being jointly established by the Missouri Department of Health and Senior Services. This emergency rule was filed March 15, 2002, becomes effective March 25, 2002 and expires September 20, 2002.*

(1) For the purposes of section 332.311, RSMo only, the term "public health setting" shall be defined as a location where dental services authorized by section 332.311, RSMo are performed so long as the delivery of services are sponsored by a governmental health entity which includes:

- (A) Department of Health and Senior Services;
- (B) A county health department;
- (C) A city health department operating under a city charter;
- (D) A combined city/county health department; or
- (E) A nonprofit community health center qualified as exempt from federal taxation under section 501(c)(3) of the *Internal Revenue Code* including a community health center that receives funding authorized by sections 329, 330, and 340 of the United States Public Health Services Act.

*AUTHORITY: section 332.311.2, RSMo Supp. 2001. Emergency rule filed March 15, 2002, effective March 25, 2002, expires Sept. 20, 2002. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 30—Office of the Director
Chapter 7—Driver and Vehicle Equipment Regulations

EMERGENCY RULE

11 CSR 30-7.010 Motor Vehicle Window Tinting Permits

PURPOSE: This rule establishes procedures for the issuance of motor vehicle window tinting permits as authorized by section 307.173, RSMo.

*EMERGENCY STATEMENT: This emergency rule sets forth requirements for obtaining motor vehicle window tinting permits. Persons who require vision reducing material applied to their vehicles in excess of statutory allowances pursuant to a prescription for the treatment of a serious medical condition, may be issued a permit to operate the vehicle equipped as such. The director of the Department of Public Safety is statutorily required to promulgate a rule for the issuance of this permit. The director finds an immediate danger to the public health, safety and welfare to the citizens of Missouri and compelling governmental interest, which requires emergency action. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The director believes this emergency regulation to be fair to all interested persons and parties under the circumstances. This emergency rule was filed February 20, 2002, effective March 4, 2002 and expires August 30, 2002.*

(1) An applicant, upon proper presentation of a prescription issued by his/her physician stating s/he has a serious medical condition requiring its use, may be issued a permit (SHP-524) to operate a motor vehicle with a front side wing vent or window that has a sun

screening device that has a light transmission of less than thirty-five percent (35%).

(2) Persons requiring such permit will:

(A) Obtain a prescription issued within one (1) year of application, from his/her physician indicating s/he has a serious medical condition that requires vehicle window tinting with less than thirty-five percent (35%) light transmission applied to the front side vent(s) or window(s);

(B) Present the prescription and the vehicle for which the permit is to be issued to the Missouri State Highway Patrol, Motor Vehicle Inspection Division;

(C) If a permit for more than one (1) vehicle is requested, only one (1) prescription is required. All vehicles must be presented.

(3) The certifying officer or motor vehicle inspector will:

(A) Verify the physician's prescription for authenticity;

(B) Complete an SHP-524 form in triplicate, utilizing the vehicle presented to fill in the applicable blanks on the form;

(C) Affix the sticker to the inside of the windshield, on the lower left side, slightly above where the inspection sticker should be affixed. Affix the decal to the outside of the lower left corner of the rear glass or left corner of the rear bumper, at the vehicle owner's option;

(D) Provide the applicant with the appropriate copy of the form and instruct him/her to maintain the copy in the vehicle at all times.

(4) The window tinting permit will remain valid during the current ownership of the vehicle. To obtain a replacement permit, the procedures outlined in sections (2) and (3) will be followed.

(5) Window tinting permits issued prior to August 28, 2001, which allowed a vehicle to be operated with vision reducing material in excess of thirty-five percent (35%) applied to the windshield, front side vents and front side windows pursuant to a physician's prescription are considered to be valid for the purposes of this rule.

*AUTHORITY: section 307.173, RSMo [1994] Supp. 2002. Original rule filed Sept. 8, 1987, effective Dec. 12, 1987. For intervening history, please consult the **Code of State Regulations**. Emergency rule filed Feb. 20, 2002, effective March 4, 2002, expires Aug. 30, 2002. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 10—Office of the Director
Chapter 4—Coordinated Health Care Services

EMERGENCY RULE

19 CSR 10-4.040 Definition of a Public Health Setting

PURPOSE: The purpose of this rule is to implement section 332.311, RSMo as amended by HB567 of the 91st General Assembly and defines the public health settings in which a dental hygienist may practice without the supervision of a dentist.

EMERGENCY STATEMENT: This emergency rule defines the term public health setting as authorized by section 332.311.2, RSMo which was amended by SB393 and HB567 of the 91st General Assembly. This emergency rule is necessary to protect the public health, safety and welfare of Missouri children by providing access to dental care in public health settings by dental hygienists. SB393 and HB567 authorized currently licensed dental hygienists, who have been in practice at least three (3) years, to work in public health settings and provide fluoride treatments, teeth cleanings and

sealants to children who are eligible for medical assistance, pursuant to Chapter 208, RSMo without the supervision of a dentist. In SB393, the legislature recognized the importance of children receiving adequate access to dental care and deemed the enactment of section 332.311 to be an emergency. Absent an emergency rule setting forth the definition of a public health setting, adequate access to dental health care for children will be delayed for many months.

*The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The board has weighed the compelling governmental interest against the due process rights of the public to notice and comment. A regular rule will be filed. Formal notice and comment opportunities will be provided through the regular rulemaking process. The board also believes this emergency rule is fair to all interested parties affected by the circumstances. This emergency rule is being jointly established by the Missouri Dental Board. This emergency rule was filed March 15, 2002, becomes effective March 25, 2002 and expires September 20, 2002.*

(1) For the purposes of section 332.311, RSMo only, the term "public health setting" shall be defined as a location where dental services authorized by section 332.311, RSMo are performed so long as the delivery of services are sponsored by a governmental health entity which includes:

- (A) Department of Health and Senior Services;
- (B) A county health department;
- (C) A city health department operating under a city charter;
- (D) A combined city/county health department; or
- (E) A nonprofit community health center qualified as exempt from federal taxation under section 501(c)(3) of the *Internal Revenue Code* including a community health center that receives funding authorized by sections 329, 330, and 340 of the United States Public Health Services Act.

*AUTHORITY: section 332.311.2, RSMo Supp. 2001. Emergency rule filed March 15, 2002, effective March 25, 2002, expires Sept. 20, 2002. A proposed rule covering the same material is published in this issue of the **Missouri Register**.*